forwarded their recommended proposals for the conference to the Department of State. No other action has been taken in this proceeding.

4. WRC–93 adopted recommendations to the ITU's Administrative Council for a substantive agenda for WRC–95, and a preliminary agenda for WRC–97. Because WRC–93 has concluded, and no further purpose would be served by keeping this docket open, we are hereby terminating this proceeding. Public comment concerning future World Radicommuniction Conferences will be sought in IC Docket No. 94–31.

5. Accordingly, *It Is Ordered* That, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), this proceeding is terminated.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–2507 Filed 2–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket Nos. 94–150, 92–51, and 87–154; FCC 94–324]

Broadcast Services; Television and Radio Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission, through Notice of Proposed Rule Making (NPRM) initiates a thorough review of its broadcast media attribution rules contained in Notes to 47 CFR 73.3555. This Notice of Proposed Rule Making requests comment on the many issues pertinent to our analysis of whether the current attribution rules continue to be effective in serving their goals or whether changes to the rules are required. This proceeding is appropriate to ensure that the broadcast attribution rules conform with other related Commission rules and to ensure that these rules effectively implement the Commission's broadcast multiple ownership rules by identifying those interests that have the potential to influence the licensee in core operating areas. such as programming. Comments are sought with respect to the current corporate stockholding attribution benchmarks, the single majority shareholder exemption, the nonattribution of nonvoting stock, and the treatment of limited partnership interests. Additionally, comment is sought on how to treat Limited Liability Companies and Registered Limited Liability Partnerships for attribution purposes. The attribution rules are a critical enforcement mechanism for the Commission as it applies its multiple ownership rules. Comments are also sought on the remaining aspects of the Commission's cross-interest policy and on what multiple ''cross-interests'' or otherwise nonattributable interests, when viewed in combination, raise diversity and competition concerns warranting regulatory oversight.

DATES: Comments are due by April 17, 1995, and reply comments are due by May 17, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Mass Media Bureau, Policy and Rules Division (202) 418–2130, or Robert Kieschnick, Mass Media Bureau, Policy and Rules Division (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket Nos. 94–150, 92–51, and 87–154, FCC 94–324, adopted December 15, 1994, and released January 12, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. This *NPRM* initiates a thorough review of the Commission's broadcast media attribution rules (found in 47 CFR 73.3555), which ''define what constitutes a 'cognizable interest' for the purpose of applying the multiple ownership rules to specific situations.'' [1]

The multiple ownership rules limit the number of broadcast stations that a single person or entity, directly or indirectly, is permitted to own, operate, or control, so as to foster programming diversity by encouraging diversity of ownership, and to assure competition in the provision of broadcast services.

2. The broadcast industry and other Commission rules have changed since these rules were last revised. For example, the multiple ownership rules themselves have been relaxed, and, concurrently with this decision, the Commission has adopted a Further Notice of Proposed Rule Making (Further Notice of Proposed Rule Making in MM Docket No. 91–221, FCC 94–322, adopted December 15, 1994), which seeks comments as to whether we should relax national and local multiple ownership limits for television stations, including the one-to-a-market rule. Also, in an additional separate proceeding published elsewhere in this edition of the **Federal Register**, the Commission is considering a variety of measures, including relaxing our attribution rules, to aid the entry of minorities and, if deemed necessary, women into broadcasting. The Commission wishes to ensure that the attribution rules remain effective in light of the previous and proposed relaxation of the multiple ownership rules.

3. Additionally, the Commission is concerned that certain nonattributable investments, while completely permissible, may permit a degree of influence that warrants their attribution for multiple ownership purposes. Moreover, the Commission is also concerned that otherwise permissible cooperative arrangements between broadcasters are being used in combination by those broadcasters to obtain, indirectly, controlling interests in multiple stations that they would be prohibited from holding directly under the multiple ownership rules. Further, this proceeding will consider how to treat, for attribution purposes, new business forms, such as Limited Liability Companies (LLCs). Finally, this review will ensure that any differences between the broadcast attribution rules and recently adopted or revised attribution rules for other regulated services are justified by other factors, such as differences between the media or our policies regulating them.

4. While the Commission's focus is on the issues of influence or control, at the same time, the attribution rules must be tailored to permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry. The Commission intends to ensure that any revisions to the attribution rules meet these stated goals, are clear to broadcast regulatees, provide reasonable certainty and predictability to allow transactions to be planned, ensure case of processing, and provide for the

[1] *Report and Order* in MM Docket No. 83–46, 49 FR 19482, May 8, 1984 (*Attribution Order*), *On recon., Memorandum Opinion and Order* in MM Docket No. 83–46, 50 FR 27438, July 3, 1985 (*Attribution Reconsideration*), *on further recon., Memorandum Opinion and Order in MM Docket No. 83–46, 52 FR 01630, January 15, 1987 (Attribution Further Reconsideration*).

reporting of all the information necessary to make the Commission's public interest finding with respect to broadcast applications.

5. This NPRM also consolidates and comprehensively reexamines other pending proceedings that directly or indirectly implicate the attribution rules. Specifically, in 1992, in a Notice of Proposed Rule Making and Notice of Inquiry in MM Docket No. 92–51, 57 FR 14684, April 22, 1992, (''Capital Formation Notice''), comments were sought regarding whether the Commission should relax several of its attribution rules in a number of specific contexts in order to stimulate investment in the broadcast industry and to benefit new entrants, who have historically experienced significant difficulties in securing adequate startup funding. The Notice inquired as to whether the Commission should relax its attribution benchmarks for active and passive stockholders, and modify its insulation criteria as to widely-held limited partnerships, including business development companies organized as such. The Commission will incorporate the record from MM Docket No. 92–51 into the record of this proceeding to the extent that it is relevant to our consideration of the foregoing issues.[2]

6. The Commission will also consider in this proceeding the comments received in response to the Further Notice of Inquiry/Notice of Proposed Rule Making in MM Docket No. 87–154, 54 FR 10026, March 9, 1989 (''Cross-Interest Notice''), in which comment was sought on whether Commission should maintain its cross-interest policy in three areas—key employees, non-attributable equity interests, and joint ventures. In the Cross-Interest Notice, we also invited comment as to whether to amend the attribution rules to incorporate the key employee portion of the cross-interest policy. The Commission will incorporate the record from MM Docket No. 87–154 into the record of this proceeding.

7. The Commission notes that this proceeding is complementary with, and will affect our actions in, two rulemaking proceedings which appear elsewhere in this edition of the **Federal Register**. The first is a Further Notice of Proposed Rule Making in MM Docket No. 91–221, which concerns the multiple ownership rules for television stations. The second is a Notice of Proposed Rule Making in MM Docket Nos. 94–149 and 91–140, which seeks comment on a number of proposed rule changes and initiatives to provide minorities and women with greater opportunities to enter the mass media industry. Because the content of the attribution rules is critical to issues raised in both proceedings, the Commission will review the comments received in those proceedings in conjunction with the comments received in the instant proceeding to assure a coordinated approach to the three proceedings.

8. In this undertaking, we are guided by basic economic concepts as to the essential nature of firms, their control, and their conduct. Comment is invited on our analysis and parties are encouraged to support their views with relevant empirical analysis and business and economic theories. Commenters are also invited to propose alternative analytical frameworks for establishing the specific interests that should be deemed cognizable under our various multiple ownership rules. The Commission's analysis will focus essentially upon the effect that financial claims on, and associated voting or contractual rights in, broadcasting companies have on their conduct. The economic conduct of concern to us relates to a broadcasting company's programming choices, including affiliation choices, and competitive practices, including advertising pricing. To address these issues with a desirable degree of confidence, the Commission will need as much information as is available to establish the connections and thresholds of concern between financial claims on a firm and its conduct.

9. Accordingly, with respect to each specific ownership or relational interest discussed herein, the Commission seeks comment on whether the level or degree of ownership interest in, or relationship to, a licensee would be likely to impart the ability to influence or control the operations of the licensee, including core functions such as programming, such that the multiple ownership rules should be implicated. The Commission intends to base its judgment with respect to each specific attribution limit or criterion considered in this NPRM on as much empirical data as can be obtained, as well as economic and business theories on levels of influence in business organizations, as discussed above, and comments are specifically invited that contain such data and are grounded in rigorous economic theories and analyses. In setting a specific attribution limit or determining whether a particular interest should be cognizable or not, the Commission asks commenters to address the degree to which we should attempt to accommodate the competing concerns that have motivated us in the past, such as not inhibiting legitimate business opportunities and encouraging the flow of capital investment into the broadcast industry. An important consideration is the extent to which the Commission can and should accommodate these interests directly. In every case, if the new rule or exemption proposed represents a departure from the commission's current rules and standards, commenters should demonstrate the justification for such a departure. Additionally, in light of our desire to promote ownership opportunities for minorities and women in the broadcasting industry, the Commission invites comment on whether there are other attribution rules, besides those discussed in MM Docket Nos. 94–149 and 91–140, that should be adjusted to promote access to capital for minorities and women.

10. The Commission seeks empirical data and analysis that would indicate the ownership level that would likely impart to its holder some ability to influence the operation of a broadcast station in a manner that is intended to be limited by our multiple ownership rules. Also, the Commission seeks data and/or analysis, based on sound economic principles, to demonstrate that changing the attribution rules would have a significant effect on capital investment and new entry. The Commission also seeks detailed economic data regarding how the capital needs and outlays of broadcasters have changed since the current attribution rules were set, as well as since the earlier set of comments were submitted in response to the *Capital Formation Notice,* and any impediments to adequate financing imposed by the current rules.

11. The Commission is concerned that any action taken in this proceeding not inhibit capital investment nor disrupt existing financial arrangements, and we seek comment as to both of these areas with respect to our proposals herein. The Commission also seeks comment on whether, and, if so, to what extent, we should grandfather existing situations if any modifications we make to the attribution rules, for example, restricting the availability of the single majority shareholder exemption or attributing nonvoting stock, would result in a new attribution of ownership to an entity for a previously held interest, and that new attribution would result in a violation of the multiple ownership rules. Alternatively, should the Commission permit a transition period, during which

[2] The Capital Formation Notice also asked whether the Commission could, under the Communications Act, and should, for policy reasons, permit the holding of security and reversionary interests in licenses. That issue will be resolved in a separate proceeding.

licensees could come into compliance with the multiple ownership rules, as affected by any changes we make in the attribution rules?

12. The Commission recognizes that any specific benchmark or limit that is adopted will not include every influential interest that might be limited by the multiple ownership rules. A particular holding or interest not considered cognizable under our rules may, in the context of the structure of a particular business, including the relative distribution of ownership interests in that company, permit a degree of influence or control that should be regulated under the multiple ownership rules. On the other hand, a rule of general applicability drawn so strictly as to include every possible influential interest would ensnare innumerable interests that have no ability to impart influence or control over a licensee's core decision-making processes to their holders. Weighing these considerations, the Commission preliminarily concludes that our goals of predictability and certainty can best be achieved if we continue to use benchmarks and specific attribution limits rather than proceeding on an *ad hoc* basis. Of course, the Commission retains the discretion to treat specific factual situations on a case-by-case basis. Commenters may, of course, address these basic propositions.

Stockholding Benchmarks

13. In devising our attribution rules, the Commission proceeds on the basis of certain assumptions. As noted above, the attribution rules focus on the issues of influence on and control of a firm. Thus, this *NPRM* first concentrates on equity holders and addresses whether or not particular equity holdings have the potential to control or influence the firm and its activities.–

A. Voting Stock

14. The Commission now attributes ownership to holders of 5 percent or more of the voting shares of corporations. The Commission does not attribute the shares of nonvoting shareholders, regardless of the percentage of the equity of the corporation contributed by those shareholders or the percentage of the nonvoting shares that they hold. The current benchmarks were adopted in 1984. We selected the 5 percent benchmark because, according to our examination, a 5 percent shareholder in a widely-held corporation would typically be one of the two or three largest corporate shareholders and thus could potentially influence a licensee's management and operations. Further, this benchmark corresponds with Security and Exchange Commission regulations that require the reporting of ownership interests of 5 percent or greater.[3] We also concluded that adoption of a benchmark higher than 5 percent may result in many substantial and influential interests being overlooked and that the need to adopt a higher threshold was unclear since every demonstrable benefit to be derived from relaxing the attribution rules would be achievable in large measure from adopting a 5 percent benchmark.

15. In the *Capital Formation Notice*, the Commission proposed to increase the general attribution benchmark for voting stock from 5 percent to 10 percent in order to stimulate capital investment. The Commission asked commenters how we might preserve investment flexibility while adequately accounting for all influential interests that merit scrutiny under our rules. The record thus far does not contain information sufficient to justify raising the benchmark to 10 percent. Commenters addressing this issue unanimously supported raising the benchmark due to changes in the economic and competitive environment of the media marketplace since the mid 1980s, but they did not provide enough information on the changes in the economic climate and competitive marketplace to justify raising the benchmark or explain and verify the link between raising the attribution benchmark and precipitating additional capital investment.

16. While commenters argued that a less than ten percent stockholding is not, in itself, sufficient to presume that the holder could exert control or influence over the corporation, they do not explain the basis for that claim or provide any specific information that would allow us to devise a methodology to assume that such a stockholder would remain inactive in the affairs of the company in most or all cases. Moreover, comment is requested on whether such factors as the size, composition of management, and minority shareholder rights of individual corporations might not be increasingly relevant where larger nonattributable stockholdings are permitted. Therefore, commenters are asked to provide detailed illustrations of the role of minority shareholders in the management of a corporation. In addition, the Commission seeks more detailed information about the impact of minority shareholder rights on corporate management generally, particularly in those instances where individual minority shareholders might act in concert with others to affect the decision making of the corporate licensee or permittee.

17. With respect to the issue of facilitating increased capital investment, the Commission seeks answers to the following questions. Is there support for the assumption that an increased attribution benchmark will result in greater capital investment? If so, how would any increased availability of or reduced cost of capital resulting from an increased attribution benchmark be likely to be allocated between smaller, less established broadcasters and larger, more established ones? Should we be concerned that proportionately increasing the capital available to larger entities or reducing its cost to them might actually strengthen those licensees that already dominate the broadcast industry, thereby threatening competition and diversity? Analyses of these effects at several different hypothetical attribution benchmarks are requested.

18. *Commission Attribution Rules in Other Services.* The Commission seeks comment on the relevance of attribution rules applied in other FCC services. A critical matter on which we seek comment is whether and how a change in the Commission's broadcast attribution benchmark would affect the many services that rely on it. The Commission invites comment on the relevance of the attribution criteria for other services detailed in paragraphs 26–36 in the full text of this *NPRM*, as well as on others not discussed therein, to our consideration of the broadcast attribution rules. Does broadcasting have unique factors that make comparison with other Commission services inapposite, or, to the contrary, should we consider our action in other services as precedential? Is broadcasting sufficiently different from these other services in nature, function of the service or otherwise so as to justify any differences? Or, are the purposes of the broadcasting attribution and multiple ownership rules sufficiently distinct so as to justify any differences between those rules and those of the other Commission services?

19. *Other Agency Benchmarks.* In addition to taking note of the attribution rules used in other Commission services, the Commission also seeks comment as to regulatory benchmarks used by other federal agencies, including those discussed in the full text of this *NPRM* and other standards that commenters may bring to our attention. The strength of the analogy to

[3] Securities and Exchange Act Section 13(d), 15 U.S.C. 78m(d).

other benchmarks will, of course, depend on whether the purpose of the particular benchmark in question parallels the Commission's objective in identifying ownership interests that confer on their holders the ability to influence the day-to-day operations of a licensee, and commenters should address, in detail, why a particular agency's benchmark may or may not be applicable, by analogy, to our analysis. The Commission is particularly interested in whether the purposes underlying other regulatory benchmarks are comparable to our competition and diversity concerns, and why that agency believed the percentage it selected reflects a substantial enough interest to constitute the level of influence or control that implicates its underlying ownership limitation, and, in particular, whether is analytical methodology would be applicable to our rules.

20. The Commission seeks comment on how to devise rules that are consistent with the administrative concerns expressed in our section devoted to our underlying principles, and that would accommodate the principles as discussed in the full text of his *NPRM.* Should there be an exemption, similar to the single majority stockholder exemption, for stockholders in firms where management holds some threshold level of stock, on the ground that the inherent control afforded managers would preclude significant influence by other stockholders? Can the Commission's stockholding benchmarks rely on, or take cognizance of, the size of a stockholding relative to others in the firm?

B. Voting Stock: Passive Investors

21. In the *Attribution Order,* the Commission adopted a 10 percent attribution benchmark for certain institutional investors (bank trust departments, insurance companies, and mutual funds) that we deemed to be ''passive'' in nature in order to ''increase the investment flexibility of these entities and, in so doing, expand the availability of capital to the broadcast and cable industries without significant risk of attribution errors.'' The *Capital Formation Notice* proposed increasing the passive investor benchmark from 10 percent to 20 percent. The commenters who addressed this issue unanimously supported increasing the voting stock attribution level for passive investors, but provided no basis on which to conclude such a change is appropriate. Commenters are invited to delineate what specific assurances we would have that passive investors that hold large stock interests cannot or would not exert influence or control over broadcast licensees and that raising the benchmark would therefore not exclude from attribution holders of interests that have a significant and realistic potential to influence station operations. Are there common factors, intrinsic to all passive investors, or institutional or other safeguards that could provide such assurance? Moreover, the comments do not, in the Commission's view, dispose of the Commission's concern regarding the impact on corporate decision-making that could result, even unintentionally, by the trading and voting of large blocks of stock of assertedly passive investors. Commenters are asked to address the foundations of the Commission's concern about the possible effect of large stock trades and whether there have, in fact, been any stock transactions of this nature. If so, how substantial have such stock transactions been, and do the costs of the exclusion of such interests from attribution outweigh any potential benefits that might be realized from an increased attribution benchmark?

22. The Commission seeks additional analysis on the degree of increased investment that would likely stem from any adjustment of our rules and on the need for such increased investment. Additionally, the commenting parties did not adequately address the Commission's concerns that any increase in these attribution levels not implicate our concerns about the potential for influence. Finally, if the benchmark for all investors is raised to 10 percent, does that reduce any need there might be to facilitate broadcast investment by increasing the passive investor benchmark?

23. Several commenters raised a closely related issue not discussed in our *Capital Formation Notice.* They requested that the Commission further expand the passive investor class to include other institutional investors, such as pension funds, investment and commercial banks, and certain investment advisors. The Commission does not intend to revisit its decision of 1984 in order to broaden the category of passive investors to include such entities. However, commenters are invited to argue why this tentative conclusion is incorrect. Similarly, the Commission is not prepared to expand the category of passive investors to include Small Business Investment Companies (''SBICs'') and Specialized Small Business Investment Companies (''SSBICs''), formerly known as Minority Enterprise Small Business Investment Companies (''MESBICs''), as proposed in the *Capital Formation Notice.* The Commission has received no evidence in the comments made thus far to alter our first conclusion that these entities do not meet our definition of ''passive.'' In the above cited *NPRM* in MM Docket Nos. 94–149 and 92–140, adopted simultaneously with this *NPRM,* the Commission is, however, considering other rule changes to facilitate capital investment and entry by minorities and women without broadening our definition of ''passive'' investors.

C. Minority Stockholdings in Corporations With a Single Minority Shareholder

24. Minority voting stock interests held in a corporate licensee are not attributable if there is a single majority shareholder of more than 50 percent of the corporate licensee's outstanding voting stock. The Commission invites comment as to whether we should restrict the availability of this exemption. The Commission is concerned that this exemption not be used to evade the multiple ownership limits and that our previous conclusion that a minority stockholder could not exert significant influence on a licensee where there is a single majority stockholder may not be a valid conclusion in all circumstances. For example, if the minority voting stockholder has contributed a significant proportion of the equity, holds 49 percent of the voting stock, and combines that holding with a large proportion of the nonvoting shares or debt financing, would that minority shareholder have the potential to influence the licensee such that the multiple ownership rules would be implicated? The Commission invites comment on how we should approach our concerns in this area. Should the availability of the exemption be restricted? If so, should the Commission do so on a case-by-case basis or restrict it in specified circumstances?

D. Non-Voting Stock

25. Under the Commission's attribution rules, all non-voting stock interests (including most preferred stock classes) are generally nonattributable. The Commission solicits comment on whether to amend the attribution rules to consider nonvoting shares as attributable, at least in certain circumstances. The Commission is concerned, for example, that a nonvoting shareholder who has contributed a large part or all of the equity of a corporate licensee may carry appreciable influence that is not now attributed. If the Commission decides to attribute nonvoting shares, should we do so only where substantial equity holdings are held in combination with

other rights, such as some voting shares or contractual relationships? If the Commission decides to attribute nonvoting shares without reference to the existence of other contractual relationships, should we adopt a separate benchmark at the same level as we apply either to voting shares or to ''passive'' investors? The Commission tentatively believes that we should, if we decide to attribute nonvoting shares, adopt a benchmark at least as high as that applied to ''passive investors'' since there is a common assumption of less potential for influence or control in both instances.

Partnership Interests

26. The Commission generally attributes all partnership interests, except for sufficiently insulated limited partnership interests, regardless of the degree of equity holding. There is no apparent controversy regarding the rule to attribute all general partnership interests, and the Commission does not intend to revisit this rule. The Commission currently exempts from attribution those limited partners that are sufficiently insulated from ''material involvement,'' directly or indirectly, in the management or operation of the partnership's media related activities, upon a certification by the licensee that the limited partners comply with specified insulation criteria. Limited partnership interests that are not insulated are attributable, regardless of the amount of equity held. The Commission seeks comment on the effectiveness of the current insulation criteria for limited partnership interests. Are additional insulation criteria necessary to assure that the goals of the attribution rules are achieved? Or, to the contrary, should the insulation criteria be relaxed to any degree, at least in certain circumstances, to attract increased capital investment or encourage new entry, and can this be done without implicating the purposes of the multiple ownership rules to encourage diversity and competition?

27. *Business Development Companies and Other Widely-Held Limited Partnerships.* The *Capital Formation Notice* proposed to relax insulation criteria with respect to business development companies organized as limited partnerships so as to eliminate, as much as possible, the current conflict with state and federal securities laws. Alternatively, the *Capital Formation Notice* asked whether the Commission should combine an equity ownership standard specific to these partnerships with a more limited relaxation of specific insulation requirements. The *Capital Formation Notice* also solicited comments on whether the Commission should modify the insulation criteria applicable to all ''widely-held'' limited partnerships to recognize insulation where limited partners hold an insignificant percentage of the total interests in the partnership. The Commission asked whether a 5 percent or other ownership benchmark would be appropriate in certain circumstances.

28. The Commission seeks additional comments in this area. In particular, we would like updated information and additional empirical information on the growth and prevalence of business development companies and widely-held limited partnerships as investment vehicles generally, as well as applied to the broadcast industry in particular, including the percentage of equity typically represented by their investment. In this regard, it will be helpful for commenters to discuss with specificity the operation of business development corporations and widely-held limited partnerships and whether the existing insulation criteria have hindered capital flow from these entities to licensees.

29. The Commission asks parties to address the standards that could be used to define widely-held limited partnerships eligible for application of any revised insulation criteria. Comment is particularly sought on whether there is anything inherent in the nature of state or federal regulation of business development companies that would insure that they remain widely held and whether such a guarantee, if it exists, is an adequate substitute for any of our current insulation criteria. Parties may also wish to offer additional suggestions for defining widely-held limited partnerships that reflect our concerns that such entities be used exclusively for investment purposes.

30. Additional information is sought, supported by empirical data, on whether the Commission should revise our decision, on reconsideration of the *Attribution Order*, not to adopt an equity benchmark for noninsulated limited partnerships. In that decision, the Commission decided to apply insulation criteria to limited partnerships, instead of applying an equity benchmark. The Commission is not inclined to change this approach based on the record compiled thus far. If parties disagree with this conclusion, they must provide us with more data and analysis to demonstrate that our earlier decision is no longer valid or effective.

31. In this respect, the Commission seeks information on the financial and legal structures of limited partnerships to enable us to determine whether there is a uniform equity level below which the Commission need not be as concerned or need not be concerned at all with the application of the insulation criteria. Should equity share be defined by the amount of cash contribution, the share of proceeds, or rights on dissolution? How would the Commission evaluate contributions in the form of services? If the power of a limited partner is not related to his proportional partnership share (which is the premise of the current rules), is there a partnership size that would obviate the power of any one partner, such that ownership should not be attributed to any partner, regardless of his share? The Commission also asks whether other state and federal regulations might provide guidance in this area, and/or the extent that such regulations might provide sufficient protection so as to make additional Commission regulations. In this regard, the Commission requests estimates, supported by economic or other studies that provide their basis, of how much additional capital might be made more readily or cheaply available to the broadcast industry by adoption of any of these approaches, as well as how such capital is likely to be distributed.

Limited Liability Companies and Other New Business Forms

32. The Commission also seeks comment as to how we should treat, for attribution purposes, the equity interest of a member in a limited liability company or LLC, a relatively new form of business association permitted and regulated by statute in at least 45 states. The Commission has recently received TV and radio assignment applications where parties have argued that we should exempt certain owners of an LLC from attribution, either because they should be treated as nonvoting shareholders or because they should be treated as fully-insulated limited partners. So that processing of pending applications is not indefinitely delayed, the Commission plans to process them on a case-by-case basis until this rule making is completed, using the tentative proposal delineated above as our interim policy, including the special exception for minorities discussed therein.

33. Comment is solicited as to how the Commission should treat LLCs, Registered Limited Liability Partnerships (''RLLPs''), and other new business forms as well as any other new business forms, that may arise in the future for attribution purposes. Any approach the Commission takes with respect to LLCs and similar hybrid entities must ensure that exemption

from attribution is granted only where there are sufficient assurances that the exempted owner is adequately insulated from control of the entity. In addressing the attribution of LLCs, the Commission hopes to delineate the principles to be applied and express them in general terms that can be applied to new business forms that appear in the future. The Commission invites comment as to the form and content of any general principles that may be distilled from our analysis of attribution of LLCs. The Commission also invites comment as to the advantages of LLCs, in general, and also, in particular, the impact on minority and female ownership opportunities.

34. The Commission tentatively proposes to treat LLCs and RLLPs as we now treat limited partnerships. Membership in an LLC or RLLP would be treated as a cognizable interest for multiple ownership purposes unless the applicant certifies that the member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the LLC or RLLP. The Commission proposes that such certification be based on the criteria specified in our *Attribution Reconsideration* and *Attribution Further Reconsideration*. Comment is invited on whether the insulating criteria developed with respect to limited partnerships are sufficient to insulate members of LLCs and RLLPs or whether other criteria would be more effective. The Commission notes, however, that applying limited partnership attribution criteria to LLCs would result in attributing all investors that may provide programming or other services to the LLC. In this regard, the Commission's recent experience suggests that such arrangements have been central to proposals that might significantly advance minority ownership of broadcast facilities. Accordingly, the Commission seeks comment on whether to provide an exception to our tentative proposal, on a case-by-case basis, where doing so would advance our policy of enhancing opportunities for broadcast station ownership by minorities.

35. The Commission is not inclined to treat LLCs as we currently treat corporations, exempting from attribution the interests of ''nonvoting'' shareholders without regard to the presence or absence of insulating provisions in an operating agreement. If, however, commenters raise significant policy reasons why the Commission should alter this interim view, we will consider those reasons. The Commission also invites comment as to what approaches should be taken to LLCs and RLLPs should we neither adopt the equity benchmark for partnerships nor retain the existing attribution standards. The Commission also requests comment on whether there are differences between LLCs and/or RLLPs and limited partnerships such that we should not treat the former entities as we treat limited partnerships.

36. The Commission invites comment on whether, if the certification approach with respect to LLCs is adopted, we should also require parties to file copies of the organizational filings and/or operating agreements with the Commission when an application is filed. If so, what, if any, confidentiality concerns exist, and how should they be addressed? If the Commission adopts, as our attribution standard, an ownership benchmark applicable to limited partnerships, comment is invited on whether it would be appropriate to apply that benchmark to LLCs and RLLPs as well.

37. If the Commission relaxes insulation standards for widely-held limited partnerships, should we apply these changes to LLCs and RLLPs? The Commission invites comment as to whether to take a uniform approach to widely-held LLCs, RLLPs, and ''business development companies.'' Do these entities have similarities in organization and/or function that would mandate such similar treatment or are there significant distinctions? Alternatively, do the policy goals discussed in the *Capital Formation Notice* apply with respect to LLCs and RLLPs so as to justify such a similar approach? If a uniform approach is warranted, what should that approach be?

38. Should the Commission treat all LLCs the same or differentiate those with centralized management from those with decentralized management? In LLCs where all management authority has been vested in nonmembers who are selected by the members, should the managers be treated, for attribution purposes, as equivalent to officers and/or directors of a corporation? Should the Commission adopt an approach of exempting from attribution members with limited equity interests, regardless of lack of compliance with insulating criteria? For attribution purposes, should the percentage of ''ownership'' be determined by voting rights among the members, the share divisions designated by the parties, the extent of capital contribution, or by some other measure? Under the commission's current attribution rules, we do not distinguish among partners based on the amount of equity they contribute or their share division. If the determination is made based on capital contribution, what should be done about members whose contribution is in services? How should the Commission treat LLCs in multi-tiered vertical organizational chains? Should multipliers be applied, and, if so, under what circumstances?

The Cross-Interest Policy and Multiple Business Interrelationships

39. The Commission also incorporates in this proceeding the pending issues raised in the *Cross-Interest Notice* with respect to the remaining aspects of the Commission's cross-interest policy. The Commission also seeks comment regarding the appropriate treatment of nonequity financial interests and multiple business interrelationships between licensees, in light of the fundamental economic principle that the conduct and control of business organizations may at times be influenced by nonequity interests.

A. The Cross-Interest Policy

40. *Background.* In 1989, the Commission issued a *Policy Statement* (54 FR 09999, March 9, 1989) limiting the scope of the cross-interest policy so that it would no longer apply to consulting positions, time brokerage arrangements and advertising agency representative relationships. At the same time, however, the *Cross-Interest Notice* was issued to seek further comment concerning key employees, nonattributable equity interests, and joint ventures. The Commission solicited comment on whether retention of the remaining cross-interest policies was necessary to prevent anticompetitive practices, whether alternative deterrent mechanisms exist to assure competition and diversity, and whether continued regulation of relationships not specifically addressed by the Commission's attribution rules is necessary. The Commission also questioned whether regulatory oversight of one or more of these interests should be limited to geographic markets with relatively few media outlets. Only five comments and reply comments were filed in response to the *Cross Interest Notice*, and almost all urged the Commission to eliminate these restrictions.

41. *Discussion.* The commenters supporting the elimination of the remaining aspects of the cross-interest policy put forth four general arguments: (1) The cross-interests that implicate diversity and competition concerns are now covered by our multiple ownership rules; (2) The video entertainment marketplace has become increasingly

competitive, thus diminishing the need for regulatory oversight of cross-interests; (3) alternative remedies, such as the antitrust laws and internal conflict of interest policies, will serve to deter abuses stemming from cross-interests; and (4) The cross-interest policy imposes significant burdens in terms of administrative costs and uncertainty, chilling investment in the broadcast industry. The Commission believes each of these arguments has merit, and continues to question the continuing need for our cross-interest policy in its present form. The Commission also strives to clarify aspects of the policy that may warrant continued enforcement.

42. For a number of reasons, however, the Commission believes it necessary to develop a more complete and updated record in our review of the cross-interest policy as applied to key employees, joint ventures, and nonattributable equity interests. It is necessary as a general matter to update the record to ensure that changes in interrelated policies are coordinated. Further, comment is also requested regarding whether multiple cross interests and business relationships between stations, when viewed in combination, raise diversity and competition concerns, an issue that the commenters did not address.

43. On a more specific level, the Commission also seeks comment regarding a number of issues either not addressed in the comments or raised by the comments themselves. First, a number of parties argued that the Commission's ownership and attribution rules have supplanted the remaining aspects of the cross-interest policy that implicate diversity and competition concerns. It is true that the Commission's attribution rules have evolved to the point where they now apply to a number of interests formerly covered only by the cross-interest policy. The Commission seeks comment, however, on whether this argument is undermined by the proposed changes to our attribution rules. There remains the question of whether particular situations warrant case-by-case review to determine whether a cross-interest poses diversity and competition concerns. The Commission requests commenters to be specific in defining the particular situations and harms they may believe require continued application of the cross-interest policy.

44. The Commission also seeks further comment on the argument that the increased competition facing broadcasters eliminates the need for the cross-interest policy. We seek comment on whether there are smaller markets with an insufficient number of media outlets to assume that competition will deter the abuses our cross-interest policy seeks to prevent. If parties believe this to be the case, they should define the size and nature of the markets that raise such concerns.

45. Commenters favoring the elimination of the remaining aspects of the cross-interest policy point to the burdens and uncertainty it creates. Parties should submit, if possible, evidence to support the assertion that the cross-interest policy has impeded the ability of broadcasters to raise capital. Comment is also sought regarding the extent, if any, of a shortage of key employees, especially in smaller markets, that may be exacerbated by the Commission's cross-interest policy.

46. In addition, commenters raised several questions regarding the alternative remedies that other parties maintain lessen the need for the remaining aspects of our cross-interest policy. How common, and how effective, are the internal conflict of interest policies cited by parties as providing a means to deter abuses stemming from key employee cross-interests? While the antitrust laws deter anticompetitive conduct, do they address the diversity concerns behind the cross-interest policy? The Commission seeks comment as to these questions and more generally as to the effectiveness of these alternative remedies.

47. Finally, no comment was received on ways to clarify and possibly narrow the cross-interest policy in the event the Commission determines that continued enforcement is appropriate. The Commission now seeks specific suggestions as to how the cross-interest policy might be clarified. The Commission also seeks comment on the following means of narrowing the policy: (1) Should we limit the application of the cross-interest policy to smaller markets where competition and diversity are of particular concern, and, if so, how should we define these markets? (2) Should we enforce the cross-interest policy only where the cross-interest, if attributable under our attributable rules, would violate the ownership rules? (3) With respect to nonattributable equity interests, should we limit review only to those interests reaching a certain level of ownership, or when those interests exceed or reach a certain percentage of the licensee's voting equity?

B. Non-Equity Financial Relationships and Multiple Business Interrelationships

48. In our review of the cross-interest policy, the Commission has focused on each cross-interest individually. But broadcasters in particular markets may also at times enter into a number of different business relationships between themselves. While the Commission recognizes the important role cooperative arrangements can play, we seek comment as to whether multiple ''cross-interests'' or otherwise nonattributable interests, when viewed in combination, raise diversity and competition concerns warranting regulatory oversight. The nature of broadcaster interrelationships can vary widely, and can include nonattributable interests, contractual relationships, family relationships in conjunction with other interests, and joint arrangements among stations, including time brokerage agreements (also referred to as local marketing agreements or LMAs) and joint sales arrangements. Many of these business interrelationships serve legitimate purposes and, indeed, have been encouraged by the Commission. The Commission seeks comment as to whether ostensibly separately owned stations could so merge their operations, through a variety of joint enterprises or cooperative agreements, perhaps in conjunction with other nonattributable interests, and thereby create such close business interrelationships as to implicate our diversity and competition concerns.

49. In 1984, the Commission decided to exclude debt from attribution on the supposition that attributing debt would severely restrict capital sources for broadcasters, and because debt financing was the least likely of all financing sources to involve an interest that implicates the multiple ownership rules. The Commission believes, at this point, that we should continue to exclude such relationships, standing alone, from attribution under the multiple ownership rules because any other approach would severely impair the ability of the broadcasting industry to obtain necessary capital. The Commission would neither wish to inhibit such a key means of obtaining capital nor to disrupt existing expectations and relationships to such a degree. If any commenters disagree with this conclusion, the Commission invites them to demonstrate that the benefits of extending our attribution rules to debt and other similar contractual relationships outweigh the significant drawbacks. At the same time, there may be circumstances where debtholding, accompanied by a number of other close

business interconnections, should be considered to be attributable. Comment is requested regarding the potential for debt or other nonattributable interest, in conjunction with a series of cooperative or contractual arrangements, to provide their holders the ability to influence the day-to-day operations of a licensee, thus implicating our competition and diversity concerns.

50. Any regulation of such interrelationships among broadcasters, given their varying forms, would require case-by-case review in the context of applications for new stations of transfer or assignment applications. The Commission seeks comment as to whether the burdens and uncertainty created by such review would be outweighed by the perceived benefits of addressing the concerns in this area, and whether these concerns are best addressed in the context of our real-party-in-interest rules and *de facto* transfer of control challenges. The Commission also seeks comment as to whether any review of such close business interrelationships should be limited to those markets where the lack of competition and diversity is a particular concern, and how such markets should be defined. In addition, should the Commission focus on combinations of business interrelationships among stations in the same market only, or do inter-market relationships among stations also warrant review? The Commission wishes to emphasize that in considering these issues we are sensitive to the need not to inhibit capital flow into the broadcast industry or unduly disrupt existing financial arrangements.

Administrative Matters

51. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C. 20554.

52. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

53. *Reason for the Action:* This proceeding was initiated to obtain comment on whether the Commission's broadcast attribution rules continue to be effective in serving their intended goals, and on whether they should be revised in certain areas to more effectively achieve those goals.

54. Objective of this Action: The actions proposed in the *Notice* are intended to assure that the Commission's broadcast attribution rules effectively implement the Commission's broadcast multiple ownership rules by identifying those interest that have the potential to influence the licensee in core operating areas, such as programming.

55. *Legal Basis:* Authority for the actions proposed in this *Notice* May be found in Sections 4,303, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154,303,310.

56. *Reporting, Recordkeeping and Other Compliance Requirements Inherent in the Proposed Rule:* If the attribution rules are changed, the Commission would have to change the reporting requirements in the Commission's annual ownership report form, accordingly, as the attribution rules determine which broadcast interests must be reported to the Commission and are counted for multiple ownership purposes.

57. *Federal Rules Which Overlap, Duplicate or Conflict with the Proposed Rule:* None.

58. *Description, Potential Impact and Number of Small Entities Involved:* Approximately 11,000 existing television and radio broadcasters of all sizes may be affected by the proposals contained in this decision. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

59. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The Notice solicits comments on a variety of alternatives.

60. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice of Proposed Rule Making, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981)).

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–2545 Filed 2–1–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket Nos. 87–8 and 91–221; FCC 94–322]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission proposes a new analytical framework in which to evaluate its television ownership rules. This framework provides a more structured approach to a comprehensive economic and diversity analysis of the rules. This Further Notice of Proposed Rule Making (*FNPRM*) is issued in order to allow compilation of a comprehensive record, using this new framework, which would enable the Commission to make a fully informed decision in this important area.

DATES: Comments are due by April 17, 1995, and reply comments are due by May 17, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2130 or Robert Kieschnick, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.